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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

WELDON, K

ART UNIT

PAPER NUMBER

3752

DATE MAILED:

02/23/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application N .

358280

Applicant(s)

Jt for

Examiner

K Weldon

Group Art Unit

375

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 2/7/2000
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 5-17 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 5-17 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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1. Applicant's arguments with respect to claims 5-17 are have been considered but are moot in view of the new ground(s) of rejection.

2. Claims 6 and 11-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6 line 2 the phrase "said second conduit communicating water" causes confusion. Does this phrase mean said second water conduit communicating water or just said second water conduit?

In claim 11 line 10 the phrase "the tube" lacks proper antecedent basis.

In claim 13 the phrase "fluid connector" is considered to be indefinite. What si the connector?

In claims 8 and 15 the phrase "means for adding water to the container" is considered to be indefinite. What structure corresponds to this recitation. A suppl y source?

The claims have been examined as best understood by the examiner.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5,8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chow in view of Phister.

The Chow patent discloses a misting apparatus including a "mist" nozzle (column 4 line 19), an air pump 26, an container outlet 58, a container inlet (column 5 line 45a), container 10 and valve 36 fro controlling the spraywand 32. The claimed invention is distinguishable form Phister by its recitation of a first conduit inside the tank.

It is deemed to have been obvious to one of ordinary skill in the art to incorporate a first conduit insider the tank as taught by Phister at 16 that extends to the bottom of the tank to ensure complete dispensing of the contents.

5. Claims 7 and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chow in view of in view of Phister as applied above in view of Carter.

It is deemed to have been obvious to one of ordinary skill in the art to substituter a fanny pack liquid container as taught by Carter for the container in Chow as it is more convenient less strenuous to use than the cumbersome tank in Chow.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chow in view of in view of Phister as applied above and further in view of Jahraus.

The Jahruas patent discloses a spry system having a plurality of spray wands that are belted onto a person. The spray wands are held in position by clips 27. It is deemed to have been

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obvious to one of ordinary skill in the art to incorporate clips as taught by Jahraus to permit hands free operation of Chow's sprayer.

7. Claims 6-17 are rejected under the judicially created doctrine of double patenting over claims 4 and 9 of U. S. Patent No. 5620140 in view of Phister since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: The claimed invention is distinguishable from claims 4 and 9 in 5620140 by its recitation of a first conduit inside the tank.

It is deemed to have been obvious to one of ordinary skill in the art to incorporate a first conduit inside the tank as taught by Phister at 16 that extends to the bottom of the tank to ensure complete dispensing of the contents. Further, the present claims are broader in scope than the detailed US patent '140 claims. It is deemed to have been obvious to one of ordinary skill in the art that a simpler less complicated misting apparatus with less structural elements would be useful operative and less expensive to construct. Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant

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application during prosecution of the application which matured into a patent. See *In re*

*Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

8. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

9. The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

The following order or arrangement is preferred in framing the specification and, except for the reference to "Microfiche Appendix" and the drawings, each of the lettered items should appear in upper case, without underlining or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention.
- (b) Cross-References to Related Applications.
- (c) Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Microfiche Appendix" (see 37 CFR 1.96).
- (e) Background of the Invention.
  1. Field of the Invention.
  2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (i) Claim or Claims (commencing on a separate sheet).
- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.

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(I) Sequence Listing (see 37 CFR 1.821-1.825).

10. The drawings are objected to under 37 CFR 1.83(a) because they fail to show a fanny pack style bag to allow wearing of the devices or uses a belt like strap without a bag as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Correction is required.

11. The applicant's remarks and amendments have been carefully considered by the examiner. The applicant's attention is drawn to the outlet at 58 in chaow


12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Weldon whose telephone number is (703) 308-1117. The examiner can normally be reached on Tues-Fridays from 7 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andres Kashnikow, can be reached on (703) 308-1137. The fax phone number for this Group is (703) 308-7764.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703)308-0861.

  
Kevin Weldon  
Primary Examiner